

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,)	
	)	CIVIL NO. 86/265
Plaintiff,)	
	)	MEMORANDUM OF POINTS
v.	)	AND AUTHORITIES IN
	)	SUPPORT OF UNITED STATES’
TERRITORY OF THE VIRGIN ISLANDS et al.,	)	MOTION FOR APPOINTMENT
	)	OF A RECEIVER
Defendants.	)	PURSUANT TO
	)	FED. R. CIV. P. 66 AND
	)	THIS COURT’S
	)	EQUITY JURISDICTION
_____)	

I. INTRODUCTION

For 25 years, prisoners in the Golden Grove Adult Correctional and Detention Facility (“Golden Grove”) have been suffering in dangerous and unsanitary conditions. For those 25 years, this Court has attempted to remediate these unconstitutional conditions using every tool available to it but one -- receivership. The Territory of the Virgin Islands (“Territory”) and the Bureau of Corrections (“BOC”) have resisted the Court at every turn. Because the Territory and BOC lack the leadership to comply with more than a handful of provisions in the five remedial orders in this case, this Court should place Golden Grove in receivership. Until this is done, prisoners will continue to suffer serious harm from a lack of security, denial of medical and mental health care, and filthy and hazardous living conditions. Significantly, stabbings and other prisoner-on-prisoner violence have dangerously increased in recent months.

The Court must take action now to prevent additional serious harm to prisoners confined at Golden Grove. The appointment of a receiver is the only remaining viable option. A qualified receiver will assure that leadership is competent and qualified to implement basic correctional

practices and address institutional conditions that have been lacking for many years. Moreover, the receiver will bypass the bureaucratic morass that has prevented reforms. A receiver will solve this crisis by creating sound policies, procedures, and practices assuring accountability and by addressing staffing and physical plant concerns, to bring Golden Grove into compliance with the Court's Orders and prisoners' constitutional rights.

The United States recognizes that a receivership is an extraordinary remedy and is authorized only upon a showing that Defendants are unwilling or unable to comply with the Court's Orders. The 25-year record of defiance of Court Orders in this case unequivocally establishes the need for this measure.

II. FACTUAL BACKGROUND AND STATEMENT OF THE CASE

In December 1986, the Court entered as an Order of the Court a Consent Decree ("C.D.") executed by the United States and the Territory and other named Defendants ("Defendants"), to address unconstitutional conditions at Golden Grove. [Dkt. 3]. Twenty-five years later, Defendants still are not in compliance with fundamental provisions of the Consent Decree, subsequent Orders of the Court, or the Constitution. The Court tried for almost two decades to enforce the Consent Decree by issuing increasingly specific orders, including a 1990 Plan of Compliance [Dkt. 57] and a 2003 Stipulated Agreement [Dkt. 146]. After 20 years of non-compliance with the Court's Orders and constitutional minima, on March 23, 2006 the Court held Defendants in contempt, and appointed a Special Master. [Dkt. 224, as amended by Dkt. 231].

Since that time, the Court has continued to work with the Parties and with the Special Master to improve conditions at Golden Grove. In 2007, the Court issued a Remedial Order "to implement specific compliance recommendations of the Special Master and the United States" to

“address some of the current and ongoing conditions at Golden Grove that contribute to the continued inability of Golden Grove authorities to remedy the findings of contempt entered by th[e] Court on March 23, 2006.” [Dkt. 304 at 3]. The Remedial Order was “intended to provide Defendants a structure with measurable and clearly defined short term goals to urgently address certain of the deficiencies previously identified in this case.” *Id.* at 3. In 2010, the Court imposed an additional order establishing “one final set of extended compliance deadlines.” [Dkt. 457 at 4]. In this Order, the Court stated that the deadlines and requirements therein would “provide a clear foundation for extraordinary relief, as appropriate,” in the event that Defendants did not comply with it. *Id.* at 4.

The Special Master has endeavored to assist Defendants to achieve compliance. With input from Defendants, she drafted a Compliance Matrix with due dates for each task to be completed. The Compliance Matrix was accompanied by specific compliance measures. The Parties agreed to the substance and format of monthly compliance reports that Defendants are required to submit. The Special Master communicated with the parties to achieve clarifications of outstanding matters as they occurred. She has conducted frequent on-site visits to the facility, trained Golden Grove officials and provided expert consultation regarding policies and procedures. The Special Master has prepared eight comprehensive semi-annual compliance reports. She has testified regarding her report findings,¹ and has taken an active role in in-chambers negotiations with the Parties to set compliance plans. In short, for five years she has closely counseled Golden Grove leadership to adopt and sustain basic correctional management policies to try to achieve protection of prisoners from harm, institutional security, appropriate

¹ On March 8, 2011, the Special Master testified about her most recent findings set out in Compliance Status Report #8, and the Court adopted her findings as findings of this Court. Transcript of March 8, 2011, 21:8-11 (hereinafter “Tr.”).

prisoner healthcare, and sufficient environmental sanitation to protect against disease and inhumane conditions. Yet prisoners continue to lack basic safety and humane conditions, in violation of all aspects of the Court's Orders and constitutional minima.

A. Defendants Have Failed to Protect Golden Grove Prisoners from Serious Harm.

The 1986 Consent Decree requires Defendants to "provide such security and staff to protect inmates from wanton and reckless violence by other inmates or staff." C.D. § I.2. [Dkt. 3]. This provision has not been met, and Defendants are incapable of meeting it. Despite numerous attempts to improve security and correctional officer staffing, Golden Grove is becoming a markedly more violent facility. Tr. 13:9-10.

There have been six stabbings at Golden Grove since July 2010. Special Master Report, March 5, 2011 ("S.M. Rpt.") at 11-12; Defendants' Golden Grove Court Report, May 10, 2011 ("Defs. Rpt.") [Dkt. 535-1] at 1. The level of violence may be greater than known, because corrections officials do not have an adequate system for reporting serious incidents, and the leadership does not consistently report serious incidents of violence to the Special Master. S.M. Rpt. at 21, 29. Nonetheless, the Special Master's review of facility records revealed sufficient evidence that the level of prisoner-on-prisoner and detainee-on-detainee violence is "disturbing." S.M. Rpt. at 22.

In response to the first four stabbings, the Special Master convened a conference call in February 2011 to determine BOC's planned response. At the time of the call, BOC had no plan, but soon after organized a facility-wide lockdown and search. S.M. Rpt. at 13; Tr. 14:7-10. While this "security drill" was poorly executed, it revealed much about the facility's failings. S.M. Rpt. at 14. It netted an astonishing amount of contraband, including weapons, illegal drugs, street clothing, key-like devices, and electronics. S.M. Rpt. at 15. The Special Master reported

that the amount and type of contraband found “provide an extremely disturbing look at a facility out of control.” S.M. Rpt. at 14.

The violence is a direct result of Defendants’ failure to implement the Consent Decree and subsequent Orders. For example, Defendants have not:

- developed a comprehensive correctional policies and procedures manual;
- trained staff on policies and procedures;
- developed or implemented a comprehensive prisoner and detainee classification system;
- implemented a proactive and regularized system of conducting shakedowns and prisoner patdowns to limit contraband;
- developed a system of tool control;
- conducted sufficient disciplinary hearings to assure that charges of prisoner and detainee misconduct are heard and resolved;
- developed or implemented an employee recruitment plan; or
- implemented other measures to hire sufficient numbers of qualified personnel and supervisors as set out in approved hiring plans.

The Special Master summed up current conditions in her recent report, which the Court adopted (Tr. 21:8-11): “Golden Grove is a violent place. The contraband that flows into the prison is evidence of corruption. *There is no reason to think that the current BOC leadership is capable of addressing basic security and waiting any longer to act places lives in danger.*” S.M. Rpt. at 44 (emphasis added).

1. Defendants Have Failed to Produce an Adequate Set of Policies and Procedures.

Defendants’ failure to develop facility-wide correctional policies and procedures exemplifies their long-standing inability to even begin to implement Court-ordered requirements.

After it became apparent that the original Consent Decree and the 1990 Plan of Compliance would not be implemented, the United States negotiated a Stipulated Agreement [Dkt. 146], which the Court entered as an Order. [Dkt. 148]. Among other things, the Stipulated Agreement required Defendants to develop a comprehensive policy and procedures manual, disseminate it to all correctional staff, and keep a copy at every post. Stipulated Agreement, Attachment A, § I. A. [Dkt. 146]. The Court's Order of May 15, 2007 again required Defendants to develop a comprehensive policy manual and to train staff on the policies. [Dkt. 304 at 7].

Despite these repeated orders, Defendants have not developed acceptable and comprehensive correctional policies and procedures. To assist the Defendants, the Special Master retained a corrections expert to draft model policies that would serve as a guide for Defendants' work. But Defendants lost these policies three times, and the expert gave up on any further efforts.² Tr. 24:3-12. The Special Master also provided Defendants with sample policies and provided comments to the few draft policies provided to her by Golden Grove. Tr. 24:13-23. Beginning in late 2010, the Special Master twice brought an expert to train Golden Grove employees to write correctional policies. Tr. 25:3-10. In January 2010, nine Golden Grove officers visited the Miami-Dade Department of Corrections and received extensive training on generally accepted correctional practices. S.M. Rpt. at 8. Notwithstanding these extraordinary efforts, Defendants have failed to produce a comprehensive set of policies and procedures. Tr. 25:11-23.

² Corrections expert Darnley Hodge provided defendants with multiple copies of the drafts over a two year period, but Defendants lost each one. S.M. Rpt. at 42, 43.

2. Defendants Lack an Adequate Prisoner and Detainee Classification System.

This Court's Orders require Defendants to "provide such security ... to protect inmates from wanton and reckless physical violence by other inmates..." C.D. § I.2. [Dkt. 3]. Basic correctional practices require a system of inmate and detainee classification to keep inmates safe from violence. Tr. 15:14-16; 16:11-22. Defendants' classification system for both sentenced prisoners and detainees is inadequate. The instrument being used to classify sentenced prisoners is designed to evaluate pre-trial detainees, and it has not been validated for Golden Grove. Tr. 16:6-10. Moreover, only one of the four employees tasked with classifying sentenced prisoners has ever received training on the instrument or process. Tr. 16:1-3.

Similarly, there are serious deficiencies in the classification system for pre-trial detainees. At the time of the status conference on March 8, 2011, Defendants were not classifying detainees at all. S.M. Rpt. at 17. Defendants had previously classified detainees, but that practice had ceased. S.M. Rpt. at 16. Thus, all detainees -- regardless of history of violence, gang affiliation, or mental health status -- were housed together. Defendants stopped classifying detainees about two years earlier as a "pilot project," due in part to limited cell assignment availability. S.M. Rpt. at 17.

In her most recent report to the Court, the Special Master concluded that "the level of violence in the detainee housing areas is directly related to the lack of a classification interview, housing of mentally ill detainees without appropriate services, and a total absence of understanding about how to develop a housing plan . . . to meet security needs of arrestees." S.M. Rpt. at 19. Still, at the March 8 hearing, the Director of the BOC testified that he believes a formal classification of detainees is unnecessary. Tr. 39:8-18.

Defendants now claim that they once again are classifying detainees. Defs. Rpt. May 10, 2011 [Dkt. 535-1] at 2. The Defendants' failure to grasp the importance of classifying detainees, in spite of the Special Master's warnings and a recent stabbing in the detainee housing area, and their failure to sustain prior reforms, exemplify a failure of leadership and an inability to implement and sustain minimally adequate correctional practices.

3. Defendants Are Unable to Stop Contraband From Entering the Facility.

An alarming amount of contraband finds its way into Golden Grove. Weapons, cell phones, street clothing, handkerchiefs, drugs, alcohol, and knives have been found. S.M. Rpt. at 13-14, 15. Defendants have failed to perform security cell shakedowns on a regular basis to respond to the introduction of contraband [Dkt. 304 at 9], in defiance of this Court's May 15, 2007 Order. S.M. Rpt. at 15. Even after the spate of recent stabbings, it was only in response to the demands of the Special Master that Defendants conducted a "security drill," which unearthed a significant cache of contraband. Tr.14:6-10. The type and amount of contraband found during this security drill led the Special Master to conclude that Golden Grove employees must have been complicit in the introduction of contraband to the facility. S.M. Rpt. at 25. The leadership's inability to adequately address the contraband problem is also, according to the Special Master, evidence of incompetence. S.M. Rpt. at 25.

The presence of a large number of weapons speaks to the level of violence in the facility, and the terror that prisoners must feel at the prospect of violence from other prisoners. The discovery of this contraband has caused the Special Master to doubt whether the leadership of Golden Grove has the ability to "handle the everyday functions that are the core function of the prison and jail." Tr. 14:18-20.

4. Defendants Do Not Have a Functioning Discipline System.

A dysfunctional disciplinary system interferes with the Defendants' requirement to protect inmates from violence. C.D. § I.2. [Dkt. 3]. Golden Grove lacks adequate staff to hold disciplinary hearings. As a result, a large number of allegations against prisoners, including serious incidents of violence, are dismissed. Consequently, prisoners are able to assault each other with impunity, and correctional officers have become frustrated by the number of cases dismissed and the arbitrary removal of prisoners from lockdown before their sentenced time is concluded. S.M. Rpt. at 22-23.

5. Defendants Fail in the Most Basic Security Tasks.

Defendants do not follow even the most basic tenets of accepted corrections practice, which contributes to violation of the Court's Orders that are designed to ensure that prisoners are protected from harm. Aside from having a completely inadequate classification system, sentenced prisoners are able to move freely throughout the facility, except during lockdown, rendering any classification system completely useless. S.M. Rpt. at 26. Staff uniforms are located in an area accessible to prisoners, despite previous warnings from the Special Master that this is a dangerous practice. S.M. Rpt. at 26. There are some cameras in the facility, but not enough of them, and they are not monitored. S.M. Rpt. at 27. On top of all of this, a number of critical sally ports and locks within the facility do not work. S.M. Rpt. at 38. An interior gate leading from the "yard" directly into the administrative building is non-functional, so it simply is left open during the day. Consequently, only two glass doors at the front entry prevent prisoners from leaving the facility. S.M. Rpt. at 38.

6. Defendants Do Not Have an Adequate Recruitment and Hiring Plan

The BOC is severely under-staffed, which directly contributes to the unconstitutionally

high level of violence in the facility. S.M. Rpt. at 30. In spite of this, Defendants have demonstrated an inability or unwillingness to comply with Orders of the Court and produce a recruitment and retention plan. In May 2007, the Court ordered Defendants to produce a recruitment plan by July 15, 2007. S.M. Rpt. at 32. Defendants did not comply with that Order. S.M. Rpt. at 32. The Court issued the Order again in February 2010, with a due date of March 2010. In response, Defendants produced an inadequate plan. S.M. Rpt. at 32. In December 2010, the Court ordered Defendants a third time to produce this plan, and gave them until January 2011 to comply. In response, Defendants requested even more time to comply. When Defendants finally submitted the plan, it was still inadequate. S.M. Rpt. at 32. To date, Defendants have not produced an adequate staffing and recruitment plan. S.M. Rpt. at 32.

B. The Physical Conditions of Confinement of Prisoners in Golden Grove are Constitutionally Inadequate.

Conditions of confinement at Golden Grove are deplorable, with little improvement since the appointment of the Special Master. S.M. Rpt. at 33. Inside the facility, it is hot; air is not circulated; there is mold; many sinks and showers do not work; and the kitchen is unsanitary. *Id.* at 33; Tr. 19:1-2. Windows have fallen out of frames, and the frames and glass provide materials for weapons. S.M. Rpt. at 34. The sanitation in housing areas is inadequate. Broken sandbags are used to control flooding. There are leaking pipes, ripped mattresses, and broken and rusted exhaust fan assemblies. *Id.* at 36. In addition to the overall appearance of decay, the broken assemblies prevent temperature control in the housing areas.

By Order of February 22, 2010, Defendants were to conduct a physical plant assessment of the facility, due to the Court in April 2010. S.M. Rpt. at 35. Defendants initially agreed to provide this assessment by November 3, 2009. The deadline then was extended to

January 20, 2010. These deadlines came and went without any communication to the Special Master or completion of plans. Order, February 22, 2010 [Dkt. 457] at 3-4. More than a year has passed since the most recent due date and Defendants have not even executed a contract with an engineer to do the work. On May 10, 2011, Defendants once again requested an extension of this critical deadline. Defs. Rpt., May 10, 2011 [Dkt. 535-1] at 30.

C. Defendants Do Not Provide Minimally Adequate Medical Care and Dental Services Remain Clearly Inadequate.

Defendants do not provide minimally adequate medical care for the serious medical needs of inmates. Defs. Rpt., May 10, 2011 [Dkt. 535-1] at 36. The Consent Decree required Defendants to file by November 1, 1986 a plan setting forth “[t]he steps to be taken to provide for adequate medical care in medical emergencies and . . . to provide medical care for the serious medical needs of inmates, including procedures to provide for appropriate storage and administration of medications.” C.D. § III.4. [Dkt. 3]. The Plan was to be fully implemented by June 1, 1988. *Id.* § III. Defendants did not meet these deadlines, and they were extended numerous times. The Compliance Matrix called for the plan to be submitted by June 1, 2011. Defs. Rpt. May 10, 2011 at 37 [Dkt. 535-1]. On March 8, 2011 Defendants testified that they were on track to meet this deadline [Tr. 72:12-14], but soon after they requested yet another extension.³ Twenty-five years after the initial due date for this plan, Defendants still have not submitted one.

By their own admission, Defendants remain out of compliance with 24 provisions of the Court’s Orders pertaining to medical care, dating back to the 1986 Consent Decree, the 1990 Plan of Compliance, and the 2003 Stipulated Agreement. The Compliance Matrix called for

³ The Special Master agreed to the extension of deadlines regarding medical services, over the objection of the United States. Defendants’ Memorandum of Law in Support of the Motion for Enlargement of Time (“Defs. Ext. Mot.”) [Dkt. 538] at 2.

many of these provisions to be completed by March 1, 2011. On March 8, 2011 Defendants testified that they had met all of these deadlines [Tr. 70:9-10], but on April 15, 2011 admitted that they had not and asked for yet another extension of all deadlines related to medical care. Defs. Rpt., May 10, 2011 [Dkt. 535-1 at 36-51].

Dental services also remain wholly inadequate. S.M. Rpt. at 41. Dental complaints received by the Special Master are significant in severity and number. Tr. 22:1-2. For the last two years, Defendants have claimed that they will be able to open a dental operatory on-site, but that has not happened. Tr. 22:7-14. As another example of Territory bureaucracy reportedly delaying compliance, no dental assistant has been hired due to the Notices of Personnel Action (“NOPA”) process. S.M. Rpt. at 40. “The NOPA hiring process” continues to signify bureaucratic delays preventing Court Order compliance.

III. LEGAL STANDARDS

The federal courts possess the authority to implement any remedies necessary to correct constitutional violations. *Washington v. Washington State Commercial Passenger Fishing Vessel Assoc.*, 443 U.S. 658, 695-96 (1979). Pursuant to its equity jurisdiction, a federal court has power to take broad remedial action to effectuate compliance with its orders. *Lewis v. Kugler*, 446 F.2d 1343, 1351-52 (3rd Cir. 1971). This equitable power includes the power to appoint a receiver. *Id.* at 1351; *see also Morgan v. McDonough*, 540 F.2d 527, 533 (1st Cir. 1976) (approving temporary receivership of South Boston High School for purpose of desegregation); *Plata v. Schwarzenegger*, No. C01-1351, 2005 WL 2932253, at *1 (N.D. Cal. Oct. 3, 2005) (ordering receivership for the delivery of medical services to all California state prisoners); *Dixon v. Barry*, 967 F. Supp. 535, 550-52 (D.D.C. 1997) (upholding appointment of a receiver over the District of Columbia’s Commission on Mental Health Services); *Shaw v. Allen*,

771 F. Supp. 760, 762 (S.D. W. Va. 1990) (appointing a receiver over a jail, noting, “a court acting within its equitable powers is justified, particularly in aid of an outstanding injunction in implementing...a receivership so as to achieve compliance with a constitutional mandate”); *Gary W. v. Louisiana*, No. 74-2412, 1990 WL 17537, at *30-31 (E.D. La. Feb. 26, 1990) (appointing receiver to oversee state’s children’s services agencies); *Reed v. Rhodes*, 500 F. Supp. 363 (N.D. Ohio 1980), *aff’d as to appointment of Administrator of Desegregation, rev’d on other grounds*, 635 F.2d 559 (6th Cir. 1980); *Newman v. Alabama*, 466 F. Supp. 628 (M.D. Ala. 1979) (appointing receiver for Alabama State Prisons); *Turner v. Goolsby*, 255 F. Supp. 724 (S.D. Ga. 1966) (maintaining receivership in school desegregation context); *Judge Rotenberg Educ. Ctr. Inc. v. Comm’r of the Dep’t of Mental Retardation*, 677 N.E.2d 127, 149 (Mass. 1997) (appointing receiver of state Department of Mental Retardation); *Crain v. Bordenkircher*, 376 S.E.2d 140, 143 (W. Va. 1988) (holding that it “has authority to place the [West Virginia] penitentiary in receivership and appoint a receiver for the purpose of constructing a new facility”); *Petitpren v. Taylor Sch. Dist.*, 293 N.W. 2d 553, 557 (Mich. Ct. App. 1981) (noting that a trial court “may appoint a receiver in the absence of a statute pursuant to its inherent equitable authority”); *Perez v. Boston Hous. Auth.*, 400 N.E.2d 1231, 1254 (Mass. 1980) (imposing receivership to achieve restructuring of housing authority).

A court may appoint a receiver to force public officials to comply with court orders. *Lewis*, 446 F. Supp. at 1351-52; *see also Dixon*, 967 F. Supp. at 550 (citing *Morgan*, 540 F.2d at 534-35) (holding the district court’s supplantation of local decision making with a receiver was justified given the local authorities’ failure to comply with the court’s desegregation orders); *Judge Rotenberg Educ. Ctr., Inc.*, 677 N.E.2d at 463 (“Public officials who fail to abide by legal standards are not immune to these remedies A court with equity jurisdiction has the

discretion to appoint a receiver to take over the main function of public officials.”) (citations omitted); *Plata*, 2005 WL 2932253, at *23 (“The use of receivers to reform public institutions has spread to analogous contexts in the civil rights arena, including prisons.”).

The decision whether to appoint a receiver is a function of the court’s discretion in evaluating what is reasonable under the particular circumstances of the case. *See Dixon*, 967 F. Supp. at 550. Courts have developed a multi-pronged test to guide this determination. The test includes the following elements, the first two of which are typically given predominant weight: (1) whether there is a grave and immediate threat or actuality of harm to plaintiffs; (2) whether the use of less extreme measures of remediation has been exhausted or proven futile; (3) whether continued insistence that compliance with the Court’s order would lead only to confrontation and delay; (4) whether there is a lack of leadership to turn the tide within a reasonable period time; (5) whether there is bad faith; (6) what resources are being wasted; and (7) whether a receiver is likely to provide a relatively quick and efficient remedy. *Plata*, 2005 WL 2932253, at *23; *see also Dixon*, 967 F. Supp. at 550 (citing *Judge Rotenberg Educ. Ctr., Inc.*, 677 N.E.2d at 148-49; *Morgan*, 540 F.2d at 533).

In sum, this “Court is not required to restrict its powers to those means that have proven inadequate, or that show no promise of being fruitful ‘[F]ederal courts are not reduced to issuing injunctions against state officers and hoping for compliance. Once issued, an injunction may be enforced.’” *Plata*, 2005 WL 2932253, at *24 (quoting *Hutto v. Finney* 437 U.S. 678, 690 (1979)).

IV. ARGUMENT

Each of the *Plata* factors regarding what a court should consider prior to imposing receivership weighs in favor of imposing receivership in this case. The Defendants’ history of

non-compliance with Orders of this Court spans two and a half decades and includes a finding of contempt and appointment of a Special Master. Since her appointment five years ago, the Special Master has worked tirelessly to help the Territory to improve conditions at Golden Grove. She has now reached the conclusion that the only means of bringing Golden Grove into compliance with constitutional mandates is through the appointment of a receiver. S.M. Rpt. at 45. Prisoners in Golden Grove are in grave danger. A receiver will provide competent leadership and bypass many of the bureaucratic obstacles that have stymied progress.

A. Prisoners at Golden Grove Face Grave and Immediate Harm and Threat of Harm.

Golden Grove is a dangerous and violent facility and prisoners confined there are at serious risk of grave harm, including death. There have been six stabbings there since July 2010 and at least one serious assault. S.M. Rpt. at 11-12; Defs. Rpt. May 10, 2011 [Dkt. 535-1] at 1. The level of violence continues unabated and indeed appears to be increasing. Tr. 13:9-10. Defendants' response to these disturbing incidents has been completely inadequate. S.M. Rpt. at 14. Defendants have failed to implement basic security measures to protect prisoners from serious harm, and this disturbing level of violence is directly attributable to their failings.

Contrary to basic correctional practice, Golden Grove until recently had no system of classifying detainees who are housed in the jail portion of the facility.⁴ S.M. Rpt. at 17. As a result, violent and dangerous detainees and vulnerable detainees -- both of whom Golden Grove fails to identify through an adequate classification system -- had access to each other, resulting in actual serious harm.⁵ In addition, even prisoners whom Golden Grove claims to classify are able to move at will among other prisoners within the facility, *Id.* at 26, thus defeating the point of a

⁴ Defendants report they now are classifying detainees. Defs. Rpt., May 10, 2011 at 2[Dkt. 535-1]. The Special Master has not yet confirmed this, nor assessed the adequacy of the classification system.

⁵ On December 22, 2010, a detainee stabbed another detainee, and on May 1, 2011, a detainee was assaulted by another detainee. S.M. Rpt. at 12; Defs. Rpt., May 10, 2011 at 1 [Dkt. 535-1].

classification system. Moreover, the facility is completely unable or unwilling to stop the river of contraband flowing into the facility. S.M. Rpt. at 14. Golden Grove does not conduct regular shakedowns in accordance with basic correctional practices; rather, the most recent significant shakedown in February 2011 was completed only after the Special Master pressed the jurisdiction to develop strategies to address the spate of stabbings since July 2010. During this shakedown, Golden Grove staff discovered weapons, clothing, electronics, cell phones, and key-like devices. This amount and type of contraband are evidence of the Facility's incompetence and/or corruption.

B. Less Extreme Remedial Measures Have Been Exhausted or Will Prove Futile.

The Court has given Defendants countless opportunities to comply with its Orders in this case and the Court has taken all reasonable steps to enforce its Orders. For the past 25 years, Defendants have consistently demonstrated they do not have the capacity, ability, or willingness to comply with the Orders of this Court.

Most recently, in 2006, the Court ordered a remedy one step shy of receivership: appointment of a Special Master who is a national expert on correctional practices with access to resources to guide Defendants toward compliance in all areas of the Court's Orders. The Special Master has provided guidance, resources, technical assistance, and extensions of deadlines and yet, five years into her appointment, conditions at the facility remain virtually unchanged. S.M. Rpt. at 44. She now believes all measures have been exhausted and that additional efforts will prove futile. S.M. Rpt. at 45. She has recommended that the Court appoint a receiver. S.M. Rpt. at 45. The United States concurs with the Special Master's assessment of the futility of continued compliance efforts short of receivership, as neither the past two and a half decades of attempting to work with Defendants, nor the past five years of close guidance by the Special

Master, has propelled Defendants any closer to compliance. Nothing short of receivership will move Defendants toward compliance without additional years of delay.

C. Continued Insistence on Compliance with the Court's Orders Would Lead only to Confrontation and Delay.

The Court can easily draw on its and the Special Master's experiences to conclude that maintaining the status quo will only result in more confrontation and delay. Defendants have an established history of noncompliance. They have not complied with any major substantive provisions of any of the Court Orders from the past 25 years, including Orders from 1986, 1990, 2003, 2007, and 2010. Instead, they have missed or requested extensions to the deadlines agreed upon (and already extended) by the parties. Given past performance, future missed deadlines are inevitable, and imposition of additional court orders would result only in additional findings of contempt and delay.

Defendants' promises of future compliance and claims of recent progress cannot be relied upon. On March 8, 2011, Defendants testified that they had met all of the Compliance Matrix's March 1, 2011 deadlines, and that they were confident that they would be able to meet all of its future deadlines. Tr. 72:12-14. In contrast, the Special Master testified that day that she believed some deadlines already had been missed and she did not believe Defendants would be able to meet upcoming deadlines, in part because of territorial bureaucratic hurdles. Tr. 26:14-16; 28:2-6; 27:4-7. Sure enough, just over a month later, Defendants admitted they had not met the March 1, 2011 deadlines relating to medical care, and requested extensions of those and a number of other critical deadlines. Defs. Motion for Enlargement of Time ("Defs. Ext. Mot.") [Dkt. 538] at 1-2. Included was a request to extend the deadline for completion of plans for an assessment of Golden Grove's physical plant, which had originally been due to the Court in

November 2009, and then again in January 2010. Order of February 22, 2010 [Dkt. 457] at 3. In making the request, Defendants cited to delays in personnel processing procedures. Defs. Ext. Mot. at 5. In another request, they cited to delays with NOPAs and the need “to solidify NOPAs.” *Id.* As predicted by the Special Master, Defendants have not been able to meet deadlines because of the Territory’s bureaucratic hurdles.

A district court faced similar circumstances when it decided to appoint a receiver for the District of Columbia’s (“District’s”) Commission on Mental Health Services. *Dixon v. Barry*, 967 F. Supp. 535 (D.D.C. 1997). There, the District had entered into a Consent Order with the plaintiff class of mentally ill District residents to overhaul its delivery of community mental health services to those individuals. The Consent Order anticipated a completion date of 1985. By 1985, the District still was not in compliance, and the Court issued a series of additional orders between 1985 and 1992. The 1992 order set forth in detail various targets, along with a timetable for implementation. The District failed to meet these obligations and, in 1993, the Court appointed a Special Master to facilitate and oversee the District’s efforts to implement the various orders of the Court. Despite the assistance of the Special Master, the District failed to fulfill its obligations. *Dixon*, 967 F. Supp. at 540.

When the *Dixon* plaintiffs finally moved for appointment of a receiver, the District argued that it was beginning to make progress and that the appointment of a receiver was unnecessary, given its recent efforts. It cited to the appointment of a new commissioner, modifications to the structure of the relevant agency, creation of additional positions, and personnel and procurement modifications. The Court, however, refused to take the District on faith, and appointed the receiver, stating, “[t]he long and frustrated history of this litigation provides no basis upon which the Court can put much trust in the District The District

repeatedly has made promise after promise about what it would do, but has substantially failed to so do.” *Id.* at 553. Here, too, Defendants repeatedly make promises about what they will be able to accomplish. Defendants have not kept those promises in the past, and there is no evidence that this pattern will change.

D. Defendants Lack Sufficient Leadership to Turn the Tide within a Reasonable Time.

The Territory may have made some progress in limited areas of the Court’s Orders since the Territory’s delayed appointment of a compliance coordinator and medical director, but it is far too limited relative to the enormity of the need. Minor improvements in medical care, for example, are insufficient to resolve ongoing dangerous conditions and contempt of court. Defendants’ leadership is incapable of successfully implementing systemic change or completing even minimal goals towards constitutional conditions of confinement at Golden Grove. Most recently, the Special Master testified that she now questions “the ability of Golden Grove leadership to handle this, to not only come into compliance, but to handle the everyday functions that are the core function of the prison and the jail.” Tr. 14:17-20.

E. Defendants’ Continued Failure to Meet or Communicate regarding Deadlines Demonstrates Bad Faith.

Though Defendants’ repeated failures and misstatements over the last 25 years may show bad faith, the Court need not make a finding of bad faith before it may appoint a receiver. *Plata v. Schwarzenegger*, No. C01-1351, 2005 WL 2932253, at *30 (N.D. Cal. Oct. 3, 2005). In *Plata*, the Court noted that, when dealing with governmental institutions, the question of motive is complicated. It found that a lack of will was a key factor contributing to the defendant’s failure to comply with court orders and appointed a receiver while declining to make a finding of bad faith. *Id.*

However, this Court could infer bad faith from Defendants' continuing record of missing deadlines established by the Court's Orders or agreed to by the parties, their failure to communicate compliance delays, and their failure to notify the Special Master of sentinel events within the facility. S.M. Rpt. at 11; *see also Dixon v. Barry*, 967 F. Supp. 535, 554 (D.D.C. 1997). Defendants' communications to the Court also have not realistically reflected the current state of non-compliance. For example, Defendants testified on March 8, 2011 that they had met all of the Compliance Matrix's March 1, 2011 deadlines and would be able to meet all future deadlines, Tr. 72:12-14, despite the Special Master's testimony that some deadlines already had been missed and others likely would be missed soon. Just over one month later Defendants admitted they had not met the March 1, 2011 deadlines relating to medical care, and requested extensions of those and a number of other critical deadlines. Tr. 26: 14-16; 28:2-6; 27:4-7; Defs. Ext. Mot. [Dkt. 538] at 1-2. Although bad faith is not needed to appoint a receiver, the Court could find it in this case.

F. Defendants Continue to Waste Federal and Territory Resources by Failing to Prioritize and Implement Pressing Requirements.

Defendants' lack of effective leadership has resulted in a waste of limited resources and has contributed to their ongoing failure to comply with the Court's Orders. According to the Special Master, the Territory appears to be providing adequate fiscal resources to the BOC, despite severe economic challenges. Yet Defendants are not using these resources to address the critical needs of the facility. Despite the obvious necessity for adequate staffing to address increased prisoner violence, the Division of Personnel and the BOC have done very little to address crucial staffing needs. For years, the Special Master has warned that the lack of adequate correctional staff has contributed to the alarming level of violence at Golden Grove and

has urged leadership to focus on hiring correctional officers. Despite these admonitions, Defendants have not allocated resources to this most pressing need, and failure to appoint a receiver will result in a continued waste of the Court's, the United States' and the Territory's time and resources, while prisoners remain in grave danger.

G. A Receiver Is Likely to Provide an Effective and Efficient Remedy.

The Court has taken steps in an effort to force Defendants to comply with its Orders, including general orders, specific implementation plans with numerical targets, the finding of contempt, formal and informal conferences with the Parties, warnings as to possible sanctions, and the appointment of a Special Master. Each of these less severe remedies has resulted in little if any sustained success. The fact that almost twenty-five years have passed without implementation of the Consent Decree is sufficient evidence that Defendants are unable or incapable of doing so. The appointment of a receiver is the only viable alternative left to the Court.

One of the reasons the appointment of a receiver would offer more efficient and effective relief than the current structure is that a receiver would be able to bypass the Territory's complicated procurement procedures, which have contributed to the delays so far. The Court has the power to appoint a receiver, and to grant that receiver whatever authority is necessary to ensure implementation of remedial orders. *Gary W. v. Louisiana*, No. 74-2412, 1990 WL 17537, at *32 (E.D. La. Feb. 26, 1990); *see also Washington v. Washington State Commercial Passenger Fishing Vessel Assoc.*, 443 U.S. 658, 695-96 (1979) ("The federal court unquestionably has the power to enter the various orders that state officials and private parties have chosen to ignore, and even to displace local enforcement of those orders if necessary to remedy the violation of federal law found by the Court.").

In *Dixon*, the court's decision to appoint a receiver was based in part on a desire to avoid the strictures of the District's procurement process. There, the court found that the necessary funding was present, but that the procurement processes hampered the defendant's ability to use that funding. *Dixon*, 967 F. Supp. at 546. In appointing the receiver, the court cited to the Special Master's testimony that her efforts at reform were confounded by the bureaucracy and politics of the District, as well as the increasingly diluted authority of the District's mayor. *Id.* at 549. The court found that the Special Master's limited powers inhibited her ability to effect change. *Id.* Accordingly, in the order appointing the receiver, the Court gave the receiver all the powers necessary to fulfill it, including, "[a]ll powers over the [Commission of Mental Health Services] currently exercised by the Commissioner of Mental Health Services, the Director of Human Services, and the Mayor of the District of Columbia." *Id.* at 555.

The District Court of the District of Columbia also ordered that the District jail's medical and mental health services be placed in receivership. *Inmates of D.C. Jail v. Jackson*, 158 F.3d. 1357 at 1359 (D.C. Cir. 1998). Once the receiver was appointed, he was able to improve conditions in a relatively short period of time, in part because he was able to bypass the District's procurement process. See Liat Weingart, *Receiverships in the Prison Litigation Context: Factors Necessary for an Effective Judicial Remedy of Last Resort*, 9 Cardozo Pub. L. Pol'y & Ethics J. 193, 236 & n. 127 (2010) (identifying factors contributing to successful receiverships through comparison of multiple experiences.)

In *Inmates of D.C. Jail*, the court had found in 1975 that conditions at the jail violated the Constitution and issued an injunction ordering the District of Columbia to improve conditions. Over a period of nearly twenty years, the court issued a variety of increasingly specific orders attempting to improve conditions at the jail, including the appointment of a Special Master to

coordinate with D.C. in an attempt to alleviate conditions. Finally, in 1995, two years after appointing the Special Master, the Court ordered receivership. *Inmates of D.C. Jail*, 158 F.3d. at 1358-59. In its order, the court granted the receiver “[a]ll powers currently held by the Mayor, City Administrator, Director of the Department of Corrections, Assistant Director for Health Services and Chief Medical Officer regarding the delivery of medical and mental health services at the District of Columbia Jail.” *Inmates of D.C. Jail v. Jackson (Inmates of D.C. Jail Order Appointing Receiver)*, No. 75-1668, at 8. Five years later, the standards in D.C. jails improved to a constitutionally acceptable level, and the receivership ended. Weingart, *Receiverships, supra*, at 223.

A number of other factors were involved in the success of the receivership in the *Inmates of D.C. Jail* case, all of which exist here. First, by the time the receiver was appointed, the Court already had issued numerous orders, and a Special Master who was familiar with the issues already was in place. *Id.* at 330. The Special Master, together with the parties, had drafted a detailed plan of action, which the receiver simply had to implement upon his appointment. *Id.* The existence of this detailed plan of action upon appointment allowed the receiver to complete work within a relatively short period of time. *Id.* at 231. Similarly, here the Special Master has drafted a compliance matrix, and like in D.C., the existence of this concrete and specific plan will allow the receiver to begin work without delay.

The relative size of Golden Grove also is advantageous. In the *D.C. jail* case, the receiver only had to deal with one institution whose population was relatively small -- in that case, about 1675 prisoners. *Id.* at 227. Because Golden Grove also is a single institution and is small by any measure, the receiver -- like the Special Master -- will quickly be able to grasp the issues facing the facility and facilitate timely compliance.

For twenty-five years this Court has struggled to bring Golden Grove into compliance with the law. Without doubt, limited progress toward that end has been made. The Court has availed itself of all tools short of receivership in an effort to protect Golden Grove prisoners from grave danger. Defendants' management, or lack of management, has prevented compliance with the Court's Orders. Receivership is the only remedy available that presents any real possibility of success without ongoing harm to prisoners and protracted waste of government resources. Experience in other jurisdictions, especially Washington, D.C., teaches that this is an appropriate case for receivership and, if implemented correctly, will work to resolve this crisis. "The responsibility of the Court is 'clear and compelling: to use its broad equitable powers to implement a remedy that, while sensitive to the burdens that can result from a decree and the practical limitations involved, promises realistically to work now.'" *Plata*, 2005 WL 2932253 at *28 (quoting *Gary W. Louisiana*, 1990 WL 17537 at *17, *30) (citations omitted).

IV. CONCLUSION

For the foregoing reasons, this Court should place Golden Grove into receivership, and through its Order, empower the receiver to implement the previous Court Orders in this case. The Court also should grant the United States' request to conduct discovery regarding this motion, including party and non-party depositions, as necessary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 9, 2011, I electronically filed the United States' Memorandum of Points and Authorities in Support of the United States' Motion for the Appointment of a Receiver, using the CM/ECF system, which will send notification to the following:

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